

GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

“Gila River Strong”

Stephen Roe Lewis
Governor



Monica Lynn Antone
Lieutenant Governor

October 5, 2021

Deborah Jordan, Regional Administrator
Environmental Protection Agency, Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Re: *Request for Government-to-Government Consultation regarding Florence Copper, Inc,
Application for an Underground Injection Control Permit*

Dear Ms. Jordan,

Pursuant to Executive Order 13175 (*Consultation and Coordination with Indian Tribal Governments*) and the Environmental Protection Agency (EPA) *Policy on Consultation and Coordination with Indian Tribes* (Consultation Policy), the Gila River Indian Community (Community or GRIC) requests that Government-to-Government Consultation be initiated with respect to Florence Copper, Inc.'s (FCI) application for an Underground Injection Control (UIC) Permit to authorize the extraction of copper ore using in-situ copper recovery (ISCR) technology.

A. Background

In 2016, the EPA issued FCI a UIC permit for a small scale copper extraction pilot project utilizing ISCR technology (UIC Pilot Project Permit). The Community filed a Petition for Review of the UIC Pilot Project Permit in January 2017, which the Community subsequently withdrew based upon a commitment by FCI (documented in a Memorandum of Agreement) to avoid injecting any hydrocarbons into the ground and to provide the Community with certain information regarding operations and environmental incidents.

In late 2020, Florence Copper applied for a UIC Permit to authorize construction and operations of a full scale ISCR project. Full scale operations will occur on approximately 1,500 acres of land located in close proximity to the Community's Reservation Lands and to the Gila River, which flows onto Community lands. EPA is currently evaluating FCI's application and has informed the Community that the agency intends to issue a DRAFT UIC Permit for public review and comment in the next several months.

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B. Potential Impacts on the Community

As stated, FCI's full scale project would be located in close proximity to the Community's Reservation Lands, which the United States holds in trust for the benefit of the Community. Without appropriate protections, there is the potential for FCI's project to adversely affect Community resources, Community interests and the environment of the Community's Reservation Lands. Specifically:

- EPA has determined that the Project could adversely affect up to 28 historic properties, including the Escalante Ruin (AZ U:15:3[ASM]), which is a Traditional Cultural Property based upon its association with the cultural practices or beliefs rooted in the Community's history and its importance in maintaining the cultural identity of the Community.
- Given the nature of the copper mining operations, there is also a potential for the Project to affect the Community's groundwater.

The Supreme Court has made clear that as a federal agency, EPA has "moral obligations of the highest responsibility and trust"¹ when dealing with Tribal interests. Accordingly, EPA's Consultation Policy expressly states that "EPA's policy is to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions *may affect* tribal interests."² Similarly, EPA's *1984 Policy for the Administration of Environmental Programs on Indian Reservations* (1984 Policy) "assure[s] that tribal concerns and interests are considered whenever EPA's actions and/or decisions may affect" Tribes.³ Here, EPA's issuance of a UIC Permit will affect the Community and its interests. Consultation is therefore necessary for EPA to fully understand and properly consider the impacts and trust implications of its UIC Permit decision, and the limitations and protections that EPA should include in any UIC Permit to protect those interests.

Finally, Consultation is timely given that EPA will soon be issuing a DRAFT UIC Permit. EPA's Consultation Policy states that "consultation should occur early enough to allow tribes the opportunity to provide meaningful input that can be considered prior to EPA deciding whether, how, or when to act on the matter under consideration."⁴ Similarly, EPA Region IX's *Approach to Consultation with Tribal Governments* states that "regional staff should strive to initiate consultation as early in the decision process as is reasonably practical."⁵

¹ *Seminole Nation v. U.S.*, 316 U.S. 286, 297 (1942).

² Consultation Policy at 1. Available at <https://www.epa.gov/sites/production/files/2013-08/documents/cons-and-coord-with-indian-tribes-policy.pdf>

³ 1984 Policy at ¶5. <https://www.epa.gov/sites/production/files/2015-04/documents/indian-policy-84.pdf>.

⁴ Consultation Policy §5(C).

⁵ EPA Region IX's *Approach to Consultation with Tribal Governments* at 3, available at <https://www.epa.gov/sites/production/files/2015-09/documents/consultation-approach-final.pdf>.

I look forward to engaging in a productive Government-to-Government Consultation. Please contact Javier Ramos at 520-562-9765 or via email (Javier.Ramos@gric.nsn.us) in the Community's Office of General Counsel to discuss scheduling.

Thank you,



Stephen R. Lewis, Governor
Gila River Indian Community

